

67,108-297 PUS1  
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Applicant thanks the Examiner for the remarks and analysis contained in the Office Action. Claims 31 and 32 have been rewritten in independent form. Claims 30 and 33-38 are cancelled. Applicant respectfully requests reconsideration of this application where claims 31 and 32 are currently pending.

Applicant respectfully submits that claim 31 is not anticipated by the *Velazquez, et al.* reference. The Office Action points to paragraph 33 of that reference as teaching the use of a data rate of signals for generating radio resource allocation instructions. Paragraph 33 of that reference does not teach this. All that paragraph 33 is doing is mentioning a data rate as part of the formula in paragraph 31 which describes the capacity of a system. That capacity and that data rate are not used as information for generating radio resource allocation instructions. Therefore, the mention of a data rate in paragraph 33 of the *Velazquez, et al.* reference does not establish a *prima facie* case of anticipation and claim 31 is not anticipated.

Applicant respectfully submits that claim 32 cannot be considered obvious over the proposed combination of the *Velazquez, et al.* reference and the *Thomas* reference. As just mentioned, paragraph 33 of the *Velazquez, et al.* reference does not teach the use of a data rate as recited in Applicant's claims. Therefore, even if the combination of references could somehow be made, the result is not the same as what is recited in claim 32 and, therefore, there is no *prima facie* case of obviousness.

Applicant respectfully submits that claims 31 and 32 should be allowed. Each recites a method that is not disclosed or in any way rendered obvious by the teachings of the cited references. Applicant respectfully submits that this case is in condition for allowance.

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Applicant hereby petitions to extend the time for filing a response to the Office Action mailed February 9, 2007 for one month, the period to end on June 9, 2007. The Commissioner is authorized to charge Deposit Account No. 50-1482 in the name of Carlson, Gaskey & Olds in the amount of \$120.00. The Commissioner is authorized to charge Deposit Account No. 50-1482 in the name of Carlson, Gaskey & Olds for any additional fees or credit the account for any overpayment.

Respectfully submitted,

CARLSON, GASKEY & OLDS

By: 

David J. Gaskey, Reg. No. 37,139  
400 W. Maple Rd., Ste. 350  
Birmingham, MI 48009  
(248) 988-8360

Dated: May 14, 2007

CERTIFICATE OF FACSIMILE

I hereby certify that this Response, relative to Application Serial No. 09/638,025 is being facsimile transmitted to the Patent and Trademark Office (Fax No. (571) 273-8300) on May 15, 2007.

  
Theresa M. Palmateer

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